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The present case is an excellent illustration of the doctrine that a guarantor is not to be held liable beyond the exact stipulations of his contract. This rule seems firmly established in New York. *N. Y. Ins. Co. v. Lowenburg*, 120 N. Y. 44; *Smith v. Mollensen*, 148 N. Y. 241. On the other hand, in Tennessee the contract is construed most strongly against the guarantor. *Bright v. McKnight*, 1 Sneed 168. And Missouri seems to hold a similar view. *Hurly v. Fidelity & Deposit Co.*, 95 Mo. App. 88. But in many jurisdictions neither of these rules of construction meets with approval and the tendency is to construe as an ordinary contract. *Davis v. Wells*, 104 U. S. 159; *Wills v. Ross*, 77 Ind 1; *Matthews v. Phelps*, 61 Mich. 327; and the construction should be as favorable to the creditor as in case of any other contract. *Swisher v. Deering*, 204 Ill. 203. While it is impossible to reconcile these conflicting constructions the weight of authority seems to be against the strict rule adopted in the present case.

INSURANCE—LIFE—AGENT—RELATION TO INSURED.—REILLY V. EMPIRE LIFE INS. CO., 90 N. Y. SUPP. 866. *Held*, that an insurance solicitor who takes an application is the agent of the insurer, notwithstanding a clause in the contract of insurance providing that the solicitor shall be the agent of the insured as to all statements and answers made in the application; and that it is therefore competent, in an action on the policy, to show that the insured gave truthful answers to the agent, who wrote false answers in the application. Woodward and Jenks, JJ., *dissenting*.

The decision in question is in decided opposition to the holdings of the Federal courts, which maintain that there is no reason that insurance policies should be considered differently from other contracts. *N. Y. Life Ins. Co. v. Fletcher*, 117 U. S. 519. This view was sustained in *Ryan v. World Mut. Life Ins. Co.*, 41 Conn. 168, where it was held that errors made by the agent invalidate the contract, because the insured is inexcusably negligent in not reading the application. *Lewis v. Ins. Co.*, 39 Conn. 100; *Richardson v. Maine Ins. Co.*, 46 Me. 394. An early New York decision, *Rohrbach v. Germania Fire Ins. Co.*, 62 N. Y. 47, was in harmony with the decisions just mentioned, but later decisions in that state are in support of the present holding. *O'Farrell v. Met. Life Ins. Co.*, 168 N. Y. 592; *Grattan v. Met. Life Ins. Co.*, 92 N. Y. 274. Now nearly all of the state courts have adopted the rule that agents of insurance companies must be regarded as agents of the insurers, not of the insured, on considerations of public policy, and have considered any stipulation to avoid their responsibility as void. *Ins. Co. v. Olmstead*, 21 Mich. 246; *Brandup v. St. Paul Ins. Co.*, 27 Minn. 393.

INSURANCE—LIFE—LIMITATION OF ACTION—VALIDITY.—UNION CENT. LIFE INS. CO. V. SPINKS, 83 S. W. 615 (KY.).—*Held*, that a provision in a life policy to the effect that no suit shall be maintained thereon, unless begun within one year from the death of the insured, is void, as in contravention of public policy, the statute prescribing a period of fifteen years for actions on such contracts. Paynter, J., *dissenting*.

This unusual ruling is sustained by like decisions in only two of our states, Nebraska and Indiana. *Eagle Ins. Co. v. Lafayette Ins. Co.*, 9 Ind. 443, declares void a stipulation in a fire insurance policy requiring suit to be brought within six months after loss, as against public policy. In a like manner the Nebraska court holds that it is the policy of the law to have but

one law of limitations, and that to establish a limitation by contract there must be a sufficient consideration. *Barnes v. McMurtry*, 29 Neb. 184. The rest of the state courts and the Federal courts agree that a condition that suit must be brought within a certain time is valid, unless unreasonable. *Thompson v. Phoenix Ins. Co.*, 25 Fed. 296; *Ins. Co. v. West*, 6 Ohio St. 602.

MASTER AND SERVANT—INJURIES TO SERVANT—BREACH OF FACTORY ACT—ASSUMPTION OF RISK.—ESPENLAUB ET AL. V. ELLIS, 72 N. E. 527 (IND.).—*Held*, in an action by a servant for injury received from a saw left unguarded, contrary to the provisions of the Factory Act, that he was entitled to recover against the master, there being no such assumption of risk as would defeat recovery.

A servant does not impliedly assume risks of service which are violations of law by the master. *Narramore v. Cleveland, C. C. & St. L. R. Co.*, 96 Fed. 295; *Durant v. Lex. Coal Min. Co.*, 97 Mo. 62. It is also held in the cases cited that knowledge by the servant of the master's violation of the statute requiring the saw or other machinery to be guarded is not a bar to recovery. See also *Britton v. Great Western Cotton Co.*, L. R. 7 Exch. 130. Acts made for the protection of servants should be construed to effect their purpose. *Groves v. Wimborne*, (1898), 2 Q. B. 402. The courts of New York and Massachusetts place an opposite interpretation upon similar statutes. The servant cannot recover for an injury resulting from an open and obvious defect caused by the master's failure to perform a statutory duty. *Knisley v. Pratt*, 148 N. Y. 372; *O'Maley v. S. Boston Gaslight Co.*, 158 Mass. 135; *Powell v. Ashland Iron & Steel Co.*, 98 Wis. 35. The statute does not abrogate the common law rule that if the servant knows of the unguarded condition and appreciates the risk he cannot call upon his employer for indemnity. *McRickard v. Flint*, 114 N. Y. 222; *Goodridge v. Washington Mills Co.*, 160 Mass. 234.

NEGLIGENCE—IMPUTABILITY—DRIVER OF VEHICLE AND GUEST.—EVENSON V. L. & B. RY. CO., 72 N. E. 355 (MASS.).—*Held*, that the right of one riding with another to recover for injuries caused by the negligence of a street car company is dependent upon the exercise of due care by his companion who was driving.

The present case can only be reconciled with the previous decisions of the same court upon the ground that the plaintiff himself failed to exercise ordinary prudence. *Allyn v. B. & A. R. R. Co.*, 105 Mass. 77; *Randolph v. O'Riordon*, 155 Mass. 331. In most jurisdictions it is now firmly established that the negligence of a driver is not to be imputed to a guest who exercises no control over him. *Little v. Hackett*, 116 U. S. 336; *Masterson v. N. Y. C. R. R. Co.*, 84 N. Y. 247; *Cahill v. C. N. O. & T. P. Ry. Co.*, 92 Ky. 345. The same rule applies to passengers in public hacks. *East Tenn., Va. & Ga. Ry. Co. v. Markens*, 88 Ga. 60; *Becke v. So. Pac. Ry. Co.*, 102 Mo. 544. But recovery will be barred if the guest failed to use reasonable prudence. *Flanagan v. N. Y. C. & H. R. R. R. Co.*, 70 App. Div. (N. Y.) 505; *Holden v. Missouri Ry. Co.*, 177 Mo. 456. The doctrine of imputed negligence is, however, still favored to a limited extent in a few jurisdictions. *Ritger v. City of Milwaukee*, 99 Wis. 190; *Nesbit v. Garner*, 75 Iowa 314; *Omaha & R. V. R. R. Co. v. Talbot*, 48 Neb. 627. But the general tendency, as above indicated, is toward the entire abandonment of the theory.